

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2157 OF 2021

Poojashri Digambar Narvekar	...Petitioner
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr. Prashant Gurav for the Petitioner.

Mr. S.S.Hulke, A.P.P for the Respondent No.1-State.

Mr. Jigar K. Agarwal for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.
DATE : 23rd JULY, 2021
(Through Video Conferencing)

P.C. :

1. Heard learned Counsel for the petitioner, learned APP for the State and the learned Counsel for the Respondent No.2.
2. Rule. Rule is made returnable forthwith with the consent of the parties and it taken up for final disposal. Learned APP waives service on behalf of the Respondent No.1/State.
3. By this application, the applicant seeks the following

substantive prayer.

(iv) That this Hon'ble Court may kindly be pleased to issue writ of certiorari or writ of mandamus or any other appropriate writ and direct the learned Trial Court to exhibit the statement of the petitioner recorded u/s 164 of the Criminal Procedure Code.

4. The petitioner is the original complainant in C.R.No. 320 of 2015 registered with the Kalachowky Police Station, Mumbai, as against the Respondent No.2 for the alleged offences punishable under Sections 354, 504 and 509 of the Indian Penal Code. After investigation, chargesheet was filed in the said case. It appears that there is a cross case registered by the Respondent No.2 against the petitioner i.e. C.R.No. 319 of 2015 also with the Kalachowky Police Station for the alleged offences punishable under Section 324, 327, 504 and 506 of the Indian Penal Code. It is not in dispute that both the FIR's arise out of the same incident. It appears that this Court had expedited the hearing of C.C.No.253/PW/2016 i.e. the case filed by the Respondent No.2.

5. As far as C.C.No.1099/PW/2015 is concerned, the charge in the said case was framed and the evidence of PW-1 - Mahesh Chavan was recorded. Thereafter, the evidence of PW-2 i.e. the petitioner commenced. Whilst recording the examination-in-chief of the petitioner, her statement recorded under Section 164 of the Criminal Procedure Code before the

learned Magistrate was opened, which was in a sealed envelope. The petitioner (PW-2) identified her signature on the said 164 statement recorded by the learned Magistrate and admitted the contents recorded in the said statement as true and correct. The statement recorded under Section 164 of the Criminal Procedure Code was, however, not exhibited by the Trial Court, pursuant to which, an application was preferred for exhibiting the said statement of the petitioner, as recorded under Section 164 of the Criminal Procedure Code. The learned Magistrate vide order dated 10th March, 2021, rejected the said application.

6. Having regard to the aforesaid, the learned Judge ought to have exhibited the said statement recorded under Section 164 of the Criminal Procedure Code. The learned Judge has clearly erred by not exhibiting the said 164 statement considering the fact, that the petitioner (PW-2) had admitted her signature on the said statement and had, even admitted the contents recorded therein. It was incumbent for the learned Trial Court to exhibit the said statement.

7. Accordingly, the application is allowed and the impugned order dated 10th March, 2021 passed by the learned Metropolitan Magistrate, 15th Court, Mazgaon, Mumbai, below Exh.41 in C.C.No.1099/PW/2015 is

quashed and set aside. The learned Trial Judge to take all such steps for exhibiting the said 164 statement, in accordance with law.

8. Since the trial has already commenced, the Trial Judge to conclude the same as expeditiously as possible. Needless to state, that the evidentiary value of the said statement recorded under Section 164 of the Criminal Procedure Code will be considered by the Trial Court at the end of the trial.

9. Rule is made absolute on the aforesaid terms. Accordingly, the petition is disposed of.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.